

## Office of the Secretary of Defense

## § 145.6

(1) Ensuring that DoD legal counsel is assigned upon request to represent a DoD employee suspected or accused by the OSC of committing a prohibited personnel practice or an illegal or improper act when the act complained of was within the scope of the employee's official responsibilities and such representation is in the interest of the Department of Defense; or, in unusual situations, that outside legal counsel is engaged where the use of DoD counsel would be inappropriate, and the same conditions are satisfied.

(2) Providing DoD legal counsel to seek intervention for the purpose of representing the interests of OSD or a Defense agency (other than the DLA) in an MSPB hearing resulting from charges of misconduct against an employee of OSD or a Defense agency, under the authority of the Civil Service Reform Act of 1978.

(3) Seeking the assistance of the Department of Justice in responding to requests by employees for legal representation in obtaining judicial review of an order by the MSPB, under 5 U.S.C. 1207.

(4) Modifying § 145.3 and Appendix to this part and issuing supplementary instructions concerning all aspects of DoD cooperation with the OSC, including instructions on OSC investigations of allegedly arbitrary and capricious withholding of information under the Freedom of Information Act or violations of the Hatch Act.

(5) Reviewing for adequacy and legal sufficiency with the IG, DoD, each report of an investigation that must be personally reviewed by the Secretary or Deputy Secretary of Defense on action taken or to be taken in response to an OSC finding of reasonable cause to believe there has been a violation of law, rule, or regulation, not including a prohibited personnel practice or allegation referred to the Attorney General of the United States for appropriate action.

(c) The *Inspector General, Department of Defense* (IG, DoD) shall:

(1) Investigate, or cause to be investigated, as appropriate, any complaint referred to the Department of Defense by OSC.

(2) Coordinate, where feasible, investigative efforts by DoD Components

and the OSC, with particular emphasis on those conducted or initiated by action of the OSC.

(3) Submit the results of any investigation conducted under this part to the appropriate General Counsel.

(d) The *Deputy Assistant Secretary of Defense (Administration)* (DASD(A)) shall serve as the Senior Management Official, as described in § 145.6(b) concerning allegations by the OSC of prohibited personnel practices or other illegal or improper acts in the OSD.

(e) The *General Counsels of the Military Departments* and the *General Counsel of the Defense Logistics Agency* shall have the same authority for their respective Components as given to the General Counsel, DoD, under paragraphs (b) (1) and (2) of this section.

### § 145.6 Procedures.

(a) *Allegations of improper or illegal conduct received from the OSC under 5 U.S.C. 1206(b)(2), (3), or (c)(3).* (1) Allegations of improper or illegal conduct referred by the OSC to the Secretary of Defense or to a Defense agency (other than the DLA) shall be forwarded to the IG, DoD.

(2) Allegations of improper or illegal conduct referred to a Military Department or to the DLA by the OSC shall be forwarded to the General Counsel of that Component.

(3) Upon receipt of a referral under paragraph (a) (1) or (2) of this section IG, DoD, or the GC of the Component concerned, as appropriate, shall ensure compliance with the Civil Service Reform Act of 1978 by obtaining a suitable investigation of an allegation, including compliance with time limits for reporting results of the investigation and personal review of the report by the head of the Component when required.

(4) Copies of each allegation referred under paragraph (a)(2) shall be forwarded by the General Counsel concerned to the IG, DoD.

(b) *OSC Investigations of Prohibited Personnel Practices.* (1) The head of each DoD Component shall designate a Senior Management Official to:

(i) Serve as a point of contact in providing assistance to the OSC in conducting investigations of alleged prohibited activities before any designation of an attorney of record for the

Component or individual respondent for matters in litigation.

(ii) Monitor those investigations.

(iii) Ensure that appropriate Component personnel are fully apprised of the nature and basis for an OSC investigation, as well as the rights and duties of Component personnel in regard to such investigations.

(iv) Ensure that any corrective or disciplinary action considered appropriate because of facts disclosed by such an investigation is accomplished under paragraph (b)(2), in a timely manner.

(2) The designated Senior Management Official shall have authority to:

(i) Refer to responsible officials recommendations by the OSC for corrective action.

(ii) Seek OSC approval of proposed disciplinary action against an employee for an alleged prohibited personnel practice or illegal or improper act under investigation by the OSC when it is determined that such discipline is warranted.

(iii) Ensure that disciplinary action against an employee adjudged at fault following completion of an OSC investigation has been considered to avoid the need for a proceeding before the MSPB.

(iv) Ensure that information concerning members of the Armed Forces who are found by the Component to have committed a prohibited personnel practice or other violation of this Directive in the exercise of authority over civilian personnel is referred to appropriate military authority.

(3) The Senior Management Official shall:

(i) Establish a system under which an employee is identified to serve as the Liaison Officer for any OSC investigator who may initiate an investigation at a facility, base, or installation for which the employee is assigned liaison duties. It shall be the responsibility of the Liaison Officer to:

(A) Assist the OSC investigator.

(B) Ensure that all OSC requests for documents are in writing.

(C) Process such requests, as well as all requests for interviews.

(ii) Determine, to the extent practicable, whether an investigation is being, or has been, conducted that rep-

licates in whole or in part the proposed or incomplete investigation by the OSC, and convey that information to the OSC whenever this might avoid redundant investigative effort.

(iii) Inform the General Counsel of the Component concerned of any OSC investigation and consult with the General Counsel on any legal issue related to an OSC investigation.

(iv) Ensure that Component personnel involved are given timely legal and policy advice, through arrangements effected by the Liaison Officer, on the nature and basis for an OSC investigation, the authority of the OSC, and the rights and duties of Component personnel, including those set forth in Appendix.

(v) Inform the IG, DoD, of any OSC investigation of an alleged prohibited personnel practice that is identified as having resulted from a whistleblower complaint or involves an allegation of otherwise illegal or improper conduct.

#### APPENDIX TO PART 145—LEGAL REPRESENTATION

1. An employee or member of the Armed Forces asked to provide information (testimonial or documentary) to the OSC in the course of an investigation by that office may obtain legal advice from DoD attorneys, both civilian and military, on that employee's or members's rights and obligations. This includes assistance at any interviews with OSC investigators. However, the attorney-client relationship shall not be established unless the employee is suspected or accused by the OSC of committing a prohibited personnel practice or other illegal or improper act and has been assigned DoD counsel.

2. An employee who believes that he or she is suspected or has been accused by the OSC of committing a prohibited personnel practice or other illegal or improper act may obtain legal representation from the Department of Defense under the conditions prescribed in §145(b)(1) of this part, except as provided in section 7, below. The attorney assigned shall be a military member or employee from another Component whenever an attorney from the same Component is likely to face a conflict between his or her ethical obligation to the employee client and to the Component employer, and in any case where the suspected or accused employee has requested representation from another Component. Outside legal counsel may be retained by the Component on behalf of the employee only under unusual circumstances and only with the personal approval of the General Counsel of the Department of Defense.